

UNITED STATES BANKRUPTCY COURT
District of Minnesota

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| In Re: Lonny G. Emerson, Debtor |) | Case No. 04-60810 |
| |) | |
| National Farmers Union Property |) | |
| and Casualty Company, |) | |
| |) | |
| Plaintiff, |) | Chapter 7 |
| |) | |
| vs. |) | <u>COMPLAINT TO DENY</u> |
| |) | <u>DISCHARGEABILITY OF DEBT</u> |
| |) | |
| Lonny G. Emerson, |) | |
| |) | |
| Defendant. |) | Adv. Proc. No. <u>04-6052</u> |
| _____ |) | |

Plaintiff, for its Complaint against the Defendant, alleges as follows:

I.

The Complaint is filed under Bankruptcy Rule 7001. The action arises under 11 U.S.C. § 523. The Petition commenced in this case was filed on July 8, 2004 and the case is now pending before the court. The court has jurisdiction over all issues arising hereunder pursuant to 28 U.S.C. § 1334 and § 157. This is a core proceeding under 28 U.S.C. § 157(b)(2)(I).

II.

Plaintiff is an insurance company, with its principal place of business in Colorado.

III.

On or about December 15, 2001, in the parking lot of the downtown Fargo Rooter's Bar, in Fargo, North Dakota, Defendant Lonny G. Emerson operated a motor vehicle, causing it to strike Jamie J. Hager.

IV.

At the above-referenced time and location, Hager and Emerson had been in a confrontation. Emerson then got into his automobile, and with willful intent and malice, and while he was intoxicated, he "floored" it and steered his automobile toward Mr. Hager, striking him, and then leaving the scene. He was a fugitive before being captured by law enforcement officials in Minnesota.

V.

At the time of the above-referenced incident, Defendant Lonny G. Emerson was uninsured.

VI.

At the time of the above-referenced incident, Jamie J. Hager was insured by the Plaintiff, National Farmers Union Property and Casualty Company, for no-fault benefits and uninsured motorist benefits.

VII.

As a result of the injuries to Jamie J. Hager, caused by the above-referenced incident, National Farmers Union Property and Casualty Company has paid Seven Thousand One Hundred Ninety and 80/100 Dollars (\$7,190.80) for reasonable and

necessary expenses compensable under the North Dakota No-Fault Act, and continues to pay such benefits.

VIII.

Pursuant to N.D.C.C. § 26.1-41-16, the Defendant is liable for reimbursing the Plaintiff for all reasonable and necessary no-fault benefits expended.

IX.

As a result of the injuries to Jamie J. Hager caused by the above-referenced incident, National Farmers Union Property and Casualty Company settled his uninsured motorist claim for the sum of Sixty Thousand and 00/100 Dollars (\$60,000.00), which was a fair and reasonable settlement of the claim.

X.

The Defendant is liable for reimbursing National Farmers Union Property and Casualty Company for the uninsured motorist payment it made to Jamie J. Hager.

Plaintiff brought suit against Lonny G. Emerson in Cass County District Court, North Dakota, and Lonny G. Emerson was served with said pleadings on May 20, 2004.

XI.

Defendant's actions in injuring Jamie J. Hager, causing the loss to National Farmers Union Property and Casualty Company, was a result of the Defendant's willful and malicious actions, all within the contemplation of 11 U.S.C. § 523(a)(6).

XII.

The Defendant's indebtedness to the Plaintiff is not dischargeable in bankruptcy

by reason of the foregoing.

WHEREFORE, Plaintiff National Farmers Union Property and Casualty Company requests judgment against Defendant Lonny G. Emerson as follows:

1. For a money judgment for damages in the amount of Sixty-Seven Thousand One Hundred Ninety and 87/100 Dollars (\$67,190.87), together with other damages as may be determined by the Court, as well as Plaintiff's costs, disbursements, and reasonable attorney's fees as may be accorded Plaintiff upon the determination of nondischargeability;

2. For a determination that the liability described herein is nondischargeable under 11 U.S.C. § 523(a)(6); and

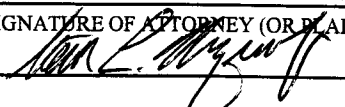
3. For such other relief as to the Court is just.

Dated this 27th day of July, 2004.

CAHILL & MARQUART, P.A.

By: 

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Union Property and Casualty Company
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Minnesota License No. 67751

| | | |
|--|--|---|
| B 104 (Rev. 2/92) | ADVERSARY PROCEEDING COVER SHEET (Instructions on Reverse) | ADVERSARY PROCEEDING NUMBER (Court Use Only) |
| PLAINTIFFS National Farmers Union Property and Casualty Company | | DEFENDANTS Lonny G. Emerson |
| ATTORNEYS (Firm Name, Address, and Telephone No.) Steven L. Marquart, Cahill & Marquart, P.A. P. O. Box 1238, Moorhead, MN 56561-1238 (218) 236-4900 | | ATTORNEYS (If Known) Bruce Madlom P. O. Box 9693, Fargo, ND 58106-9693 (701) 235-0505 |
| PARTY (Check one box only) <input type="checkbox"/> 1 U.S. PLAINTIFF <input type="checkbox"/> 2 U.S. DEFENDANT <input checked="" type="checkbox"/> 3 U.S. NOT A PARTY | | |
| CAUSE OF ACTION (WRITE A BRIEF STATEMENT OF CAUSE OF ACTION, INCLUDING ALL U.S. STATUTES INVOLVED) Plaintiff has made a claim against Defendant Emerson for no-fault benefits and uninsured motorist benefits paid to Jamie Hager. Jamie Hager was injured when Defendant Emerson intentionally, maliciously, and willfully operated his motor vehicle, causing it to strike Jamie Hager in Fargo, North Dakota, on December 15, 2001. Plaintiff seeks to have the Court determine that this debt is nondischargeable pursuant to 11 U.S.C. sec. 523. | | |
| NATURE OF SUIT (Check the one most appropriate box only.) | | |
| <div style="display: flex; flex-wrap: wrap;"> <div style="width: 33%;"> <input type="checkbox"/> 454 To Recover Money or Property <input type="checkbox"/> 435 To Determine Validity, Priority, or Extent of a Lien or Other Interest in Property <input type="checkbox"/> 458 To obtain approval for the sale of both the interest of the estate and of a co-owner in property <input type="checkbox"/> 424 To object or to revoke a discharge 11 U.S.C. § 727 </div> <div style="width: 33%;"> <input type="checkbox"/> 455 To revoke an order of confirmation of a Chap. 11, Chap. 12, or Chap. 13 Plan <input checked="" type="checkbox"/> 426 To determine the dischargeability of a debt 11 U.S.C. § 523 <input type="checkbox"/> 434 To obtain an injunction or other equitable relief <input type="checkbox"/> 457 To subordinate any allowed claim or interest except where such subordination is provided in a plan </div> <div style="width: 33%;"> <input type="checkbox"/> 456 To obtain a declaratory judgment relating to any of foregoing causes of action <input type="checkbox"/> 459 To determine a claim or cause of action removed to a bankruptcy court <input type="checkbox"/> 498 Other (specify) </div> </div> | | |
| ORIGIN OF PROCEEDINGS (Check one box only.) | | <input type="checkbox"/> CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 |
| <input checked="" type="checkbox"/> 1 Original Proceeding <input type="checkbox"/> 2 Removed Proceeding <input type="checkbox"/> 4 Reinstated or Reopened <input type="checkbox"/> 5 Transferred from Another Bankruptcy Court | | |
| DEMAND \$ 67,190.87 | OTHER RELIEF SOUGHT costs, disbursements, attorneys' fees | |
| <input type="checkbox"/> JURY DEMAND Check only if demanded in complaint | | |
| BANKRUPTCY CASE IN WHICH THIS ADVERSARY PROCEEDING ARISES | | |
| NAME OF DEBTOR Lonny G. Emerson | | BANKRUPTCY CASE NO. 04-60810 |
| DISTRICT IN WHICH CASE IS PENDING Minnesota | DIVISIONAL OFFICE Fergus Falls | NAME OF JUDGE Trustee: David G. Velde |
| RELATED ADVERSARY PROCEEDING (IF ANY) | | |
| PLAINTIFF | DEFENDANT | ADVERSARY PROCEEDING NO. |
| DISTRICT | DIVISIONAL OFFICE | NAME OF JUDGE |
| FILING FEE (Check one box only.) <input checked="" type="checkbox"/> FEE ATTACHED <input type="checkbox"/> FEE NOT REQUIRED <input type="checkbox"/> FEE IS DEFERRED | | |
| DATE 07/27/04 | PRINT NAME Steven L. Marquart | SIGNATURE OF ATTORNEY (OR PLAINTIFF)  |



Attorneys At Law

James D. Cahill
1924 - 1994

Steven J. Cahill
Steven L. Marquart
Barton J. Cahill

All licensed in MN & ND and
Certified Civil Trial Specialists
NBTA and MN Bar Association

July 27, 2004

U. S. Bankruptcy Court
ATTN: Sue
305 U.S. PO Building
118 South Mill Street
Fergus Falls, MN 56537

RE: Lonny G. Emerson, Debtor
Case No. 04-60810
Our File: SLM-1364-02

Dear Sue:

Enclosed herewith for filing, please find Complaint to Deny Dischargeability of Debt, together with required \$150.00 filing fee. Please issue a Summons and forward the same to me so that I may serve the Complaint upon Mr. Emerson. Thank you.

Sincerely yours,

Steven L. Marquart

smarquart@cahill-marquart.com

SLM:jmd
Enclosures